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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/091,958 06/07/99 EMBLETON

J 98.392

EXAMINER

HM12/0213  
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300 SOUTH WACKER DRIVE  
CHICAGO IL 60606

FAY, 7

ART UNIT

PAPER NUMBER

1614

DATE MAILED:

02/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/091,958**

Applicant(s)

**Embleton et al.**

Examiner  
**Zohreh Fay**

Group Art Unit  
**1614**



☐ Responsive to communication(s) filed on \_\_\_\_\_

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1, 2, and 4-20 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1, 2, and 4-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 13,114,8

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit:

Claims 1, 2 and 4-20 are presented for examination.

The amendments and remarks filed on December 7, 2000 have been received and entered.

Claims 1 and 2-22 are rejected under 35 U.S.C. 103 as being unpatentable over Koutby and further over UK Patent Application 2 255 918 for the reasons set forth on page 2 of the office action of May 24, 2000 and the following reasons.

UK Patent Application teaches a device for delivering a fluid drug in a spray of droplets. The above reference also teaches a jet or stream of droplets.

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant alleges criticality to the jet or stream of the droplets used in the instant application. The allegation is not well taken. The newly relied upon reference teaches that the use of jet or stream of droplets of liquid drugs is old and well known. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 1, 2 and 4-20 are properly rejected under 35 U.S.C. 103.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Fay whose telephone number is (703) 308-4604.

ZOHREH FAY  
PRIMARY EXAMINER  
GROUP 1200

